

TRIAD SUES MARSHALL, MI (continued from P. 7)

As in the Hastings case, Triad is asking the court to enjoin the performance of the new franchise, including operation, until the city establishes: (1) Marshall can economically support two cable operators, and (2) its infrastructure will safely support two systems.

Marshall's failure to hold a hearing on the economic and infrastructure feasibility of two competing cable systems, Triad's request for renewal and/or Americable's request for a franchise violates Triad's right to procedural due process, said the complaint.

In addition, the suit alleges Americable has begun constructing its system with cables located on utility poles in violation of applicable codes.

Triad is represented by Brandon Zuk of Lansing. MI-based Fraser.

Kentucky CABLE TV HELD TO BE A "SERVICE" NOT SUBJECT Franchising
Robinson-Patman TO ROBINSON-PATMAN "PRODUCT" CLAIMS Unfair competition
PK 90-58

Summary: Judge Ronald Meredith ruled that "cable TV service is not a commodity for purposes of the Robinson-Patman Act." *Telescripps Cable Co. v. City of Glasgow, et al.*, C-88-0169-BG(M) (W.D.Ky. Aug. 8, 1990).

Facts: Telescripps has numerous unfair competition, antitrust, Cable Act and contractual interference claims pending against Glasgow, KY, in both state and federal court emanating from the city's overbuild efforts.

Previously, a state court issued an injunction barring the city-owned system from utilizing internal wiring installed by Telescripps, and the federal court refused to dismiss Telescripps' eight-count complaint.

The latest ruling is on the Glasgow Electric Plant Board's (EPB) counterclaim charging Telescripps with discriminatory pricing.

Glasgow claims that shortly before it completed construction in various areas of the city, Telescripps offered subscribers in those areas substantially discounted rates if they would agree to continue their service with Telescripps for a minimum of one year.

Such price discrimination, according to the city, was obviously intended by Telescripps for the purpose of injuring or preventing competition and violates the Robinson-Patman Act, 15 USC 13.

Robinson-Patman prohibits anyone engaged in commerce to discriminate in price between different purchases of commodities of like grade and quality, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

SETTLEMENT AGREEMENT

(or in awarding a franchise to any other competitor), the City commits itself to awarding a franchise that is comparable to that awarded TeleScripps and that the terms of the agreement are no more favorable or less burdensome to the Plant Board than the terms of the TeleScripps' agreement. The renewal process will be conducted in a non-discriminatory manner such that no preference will be afforded the Plant Board or no additional burden will be imposed on TeleScripps.

4. Inside Wiring - Subscriber Change-over. The Plant Board and TeleScripps shall reach an agreement covering: (a) the use of in-place inside wiring and underground drop wires regardless of which entity installed such wiring; (b) the

make any statement, express or implied, to any member of the public regarding any TeleScripps rate adjustment occurring pursuant to, or contemplated by this paragraph.

(b) Within 14 days of the date of the receipt of the notice specified in subparagraph (a) the Plant Board shall have the right to request, by letter delivered to counsel for TeleScripps, that TeleScripps supply a showing in support of a claim that such rates are not predatory contrary to the antitrust laws as applicable to claims arising in, and as would be interpreted by a federal district court in Kentucky. If the Plant Board does not exercise such a right, the parties shall file, within 14 days of the expiration of the prior 14 day period, appropriate motions in the federal court dismissing the litigation and all claims and counterclaims stated therein with prejudice.

(c) If the Plant Board does exercise the right specified in subparagraph (b), TeleScripps shall deliver to counsel for the Plant Board within 60 days of the date the notice is received a detailed justification for the challenged rates. This justification shall include, among other things: (1) the legal standard TeleScripps believes is applicable to predatory pricing claims, applying the law in support as specified in subparagraph (b) above; (2) all costs applicable to the rate(s) in question for the system group which includes the Glasgow system for the most recent 12 month period; (3) identification of those cost categories that TeleScripps believes are applicable to the resolution of a predatory pricing claim; (4) the costs in each of the applicable categories as allocated to the Glasgow

(e) In the event the Plant Board does not exercise its right, under paragraph 6(d), to invoke the arbitration procedure specified in paragraph 7 below, the Plant Board shall return to TeleScripps all documents furnished by TeleScripps under this paragraph 6 that are classified as confidential pursuant to the protective order of the federal district court. In the event the Plant Board elects to proceed with the arbitration, treatment of such documents shall be governed by the protective order and the supplemental procedures described in paragraph 7(f).

7. Pricing Arbitration. Upon the delivery of the notice invoking this procedure pursuant to subparagraph 6(d) the following process shall be commenced:

(a) Counsel for TeleScripps and the Plant Board shall mutually agree upon a single arbitrator who will be selected to conduct the arbitration. If the parties are unable to agree on an arbitrator, they shall jointly request the chief judge of the U.S. District Court, Western District of Kentucky to appoint an arbitrator. The fees and costs of the arbitrator, including the

concerning the arbitration nor make any comment whatsoever to third parties regarding the arbitration procedure, the results of the arbitration, or any actions taken by either party in compliance with the arbitration, nor shall either party attempt to use the result, or occurrence, of the arbitration in any manner as a precedent or evidence in any other legal action or proceeding.

(e) Within 30 days of the issuance of the arbitrator's decision, the parties shall file with the federal court the motions necessary to dismiss that action; provided, however, the Plant Board retains the right to seek the retention of the jurisdiction of the federal court as may be necessary to enforce the implementation of the arbitrator's decision. The arbitrator's decision shall not affect the validity of the agreements and activities undertaken in paragraphs 1-5 hereof.

(f) Any confidential information that is subject to the protective order and supplied to or exchanged by the parties or supplied to the arbitrator during or in connection with the proceedings contemplated by this Agreement shall be protected in accordance with the following provisions:

(1) For purposes of necessary consultation with their client, Plant Board counsel may show Plant Board personnel, but not provide them copies of, confidential TeleScripps' documents provided that such documents involve cost information only of a summary or aggregate nature and do not reveal any item-by-item costs that would reveal detailed information such as a particular employee's salary, payments to an individual program supplier, etc. Where TeleScripps' supplied documents do reveal such detailed information, counsel may develop and reveal to Plant Board personnel composite figures that aggregate costs so as to not disclose item-by-item costs.

(2) During the course of the arbitration hearing Plant Board personnel shall be excluded from being present during that portion of any testimony where it becomes necessary to reveal or discuss the nature of item-by-item costs of the type specified in subparagraph (1) above, but under all other circumstances Plant Board personnel shall be permitted to be present.

(3) The arbitrator shall be directed to exclude from a written opinion details involving item-by-item costs as identified in subparagraph (1) above, and if discussion of such costs becomes necessary and relevant to the opinion, to place such discussion in a separate attachment or appendix which is labeled confidential and not disclosable to Plant Board personnel.

(4) If any dispute as to the treatment of confidential material or testimony arises during the course of the arbitration proceeding, the issue shall be presented to the arbitrator for determination, whose ruling on the matter shall be final.

(5) Except as specifically provided for above, confidential information submitted or exchanged by the parties during the arbitration proceeding, shall be accorded the protection afforded by the district court's protective order. Upon the completion of the arbitration all confidential documents supplied by TeleScripps, or documents containing confidential information extracted therefrom, shall be returned to TeleScripps by the Plant Board, its counsel, outside consultants, and by the arbitrator.

(6) For purposes of this paragraph and other

invoked, the arbitration becomes the sole remedy relative to that allegedly anticompetitive issue.

(a) The parties shall mutually agree upon a single arbitrator who will be selected to conduct the arbitration. If the parties are unable to agree on an arbitrator, they shall jointly request the chief judge of the U.S. District Court, Western District of Kentucky to appoint an arbitrator. The fees and costs of that arbitrator, including the cost of any expert consultant that the arbitrator finds necessary, will be shared equally between the parties. Unless the parties agree on other procedures, the procedures of the American Arbitration Association shall be generally followed to the extent they are not inconsistent with the procedures specified herein.

(b) Within 14 days of the invocation of this arbitration process counsel for the parties shall confer on whether there is any legitimate need for discovery under the circumstances and, if so, the procedures and cut-off dates to be applied. Discovery shall be held to the absolute minimum that is reasonable and necessary considering the issues. Unless the parties agree otherwise, the rules in the Federal Rules of Civil Procedure pertaining to discovery shall apply. Any disputes between the parties relative to discovery or other procedures shall be submitted to the arbitrator for determination, whose ruling shall be final.

(c) A hearing before the arbitrator shall be scheduled within 30 days of the completion of any discovery, or upon such other date as the parties mutually agree. The parties shall agree on what, if any, written submissions to the arbitrator in

shall retain the right to seek the enforcement of the arbitrator's decision through court action.

(f) The treatment of confidential material supplied by either party in the course of such an arbitration proceeding shall be consistent with the treatment and procedures specified in paragraph 7(f) above except that the restrictions shall apply equally to either party relative to confidential information supplied by the other party.

9. Confidential Treatment under Kentucky Law. The City and the Plant Board are public entities and subject to the Kentucky open records statutory provisions, KRS 61.870 et seq. To the extent that they or their lawful agents are in possession of confidential material pursuant to this Agreement or the litigation or documents otherwise not disclosable to the public pursuant to this Agreement, such information will be retained in a separate non-public file. If any member of the public desires access to such information and submits a demand for disclosure pursuant to KRS 61.872, prompt notice will be given to TeleScripps. Within the time period prescribed by statute (currently three days), TeleScripps will be given an opportunity to interpose objections to the release of the information. In the event TeleScripps timely objects to release of the requested confidential information, the Plant Board and/or the City shall deny such disclosure request and shall not release such records unless (1) subsequently ordered to do so by the final order of a state administrative authority or a court of competent jurisdiction or (2) TeleScripps consents to such release. If such denial is followed by administrative procedures or litigation, TeleScripps shall have the full burden, undertaken by its own representatives, of protecting the information from disclosure and shall reimburse the Plant Board and/or the City, or their agents for any reasonable legal and other costs that may be incurred in defense of non-disclosure and hold the Plant Board and its agents harmless from any fine or other damage that they may suffer as a result of non-disclosure; provided, however, neither the City nor the Plant Board shall be under any obligation to defend such information from disclosure during such processes.

10. Finality of Agreement. (a) This Agreement is contingent upon the successful negotiation of the agreements and the satisfaction of the obligations undertaken pursuant to paragraphs 1-4 hereof. Once those obligations have been successfully completed (except with respect to future franchise renewals), this Agreement will become final.

(b) Within seven (7) days of the date that this Agreement becomes final, TeleScripps shall file a motion in the state case dismissing its appeal, thus allowing the circuit court order to become final. Within the same period of time, the Plant Board

shall file a motion in the state case dismissing its counterclaims with prejudice.

(c) If the parties reach an impasse as to the negotiation of any of the agreements or in implementing the acts involved or if the obligations set forth in these paragraphs have not been

To the City: H. Jefferson Herbert, Jr. Esq.
Herbert & Herbert
135 North Public Square
Glasgow, Kentucky 42141

To the Plant Board: W. Randolph Young, Esq.
2033 M Street, N.W., Suite 400
Washington, D.C. 20036

With a copy to:
Uhel O. Barrickman, Esq.
Richardson, Barrickman, Dickinson & Ropp
118 E. Public Square
Glasgow, Kentucky 42141

After the termination of the current litigation, any notices shall be served similarly and addressed, unless otherwise advised, as follows:

To TeleScripps: President
TeleScripps Cable Co.
1100 Central Trust Tower
4th and Vine Streets
Cincinnati, Ohio 45202

To the City: Mayor, City of Glasgow
City Hall
118 E. Washington Street
Glasgow, Kentucky 42141

To the Plant Board: Superintendent
Glasgow Electric Plant Board
100 Mallory Dr.
Glasgow, Kentucky 42141

15. Miscellaneous. (a) By their execution of this Agreement, the signatories hereto certify that they have the power to execute this Agreement on behalf of and bind their respective entities and that they know of no reason why this Agreement cannot be adhered to as contemplated. (b) This Agreement shall be construed and governed under the laws of the Commonwealth of Kentucky. (c) No provision hereof may be waived, amended or modified without the written consent of both parties. (d) This Agreement may be executed in counterparts.

IN WITNESS HEREOF, the parties hereto hereby execute this Agreement as of the above date.

CITY OF GLASGOW

By: Charles B. Honeycutt
Charles B. Honeycutt
Mayor

Attest: Leslie Settle
Leslie Settle
Clerk

GLASGOW ELECTRIC PLANT BOARD

By: William H. Ray
William H. Ray
Superintendent

Attest: Lucius C. Vague

TELESCRIPPS CABLE COMPANY

By: Gilles R. Champagne
Gilles R. Champagne
President

Attest: _____

RY-1481X

EXHIBIT 8

Myron Lewis LOWERY, Jr., Plaintiff,

v.

WMC-TV, Defendant.

No. 81-2775 H.

United States District Court,
W.D. Tennessee, W.D.

April 9, 1987.

Motion to Vacate Granted June 12, 1987.

Black television weekend news anchor brought civil rights action against television station, alleging that station discriminated against him by denying him promotion, denying him written contract, and paying him less than similarly situated white station personnel, and demoted him in retaliation for filing civil rights action. The District Court, Horton, Chief Judge, held that: (1) evidence established that station denied anchor promotion because of his race; (2) evidence established that station racially discriminated against anchor in terms and conditions of his employment by denying him written contract which similarly situated white personnel were given; (3) evidence established that station discriminated against anchor by paying him less than similarly situated white station personnel; (4) evidence established that anchor was demoted in retaliation for filing civil rights action; and (5) anchor's Title VII and § 1981 actions were not time barred.

Order issued.

Vacated 661 F.Supp. 65.

1. Civil Rights ⇐38

Title VII and § 1981 are coextensive and coterminous federal statutes, and afford federal remedy to aggrieved litigants who have been racially discriminated against in employment. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

2. Civil Rights ⇐13.13(1), 43

In action under Title VII and § 1981, burden of persuasion always remains on plaintiff, who must prove that it is more probable than not that he was target of unlawful discrimination. Civil Rights Act

of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

3. Civil Rights ⇐43

After plaintiff has made prima facie showing that he was racially discriminated against in employment, defendant must go forward with evidence articulating legitimate, nondiscriminatory reason for its actions; if defendant proffers evidence sufficient to raise genuine issue of fact whether it discriminated against plaintiff, it carries burden of production, thereby raising presumption that prima facie case is rebutted, and plaintiff must then show that proffered reason was not true reason for employment decision. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

4. Civil Rights ⇐44(1)

To establish prima facie case of disparate treatment because of race under Title VII in context of employment promotion claim, plaintiff must belong to racial minority, must have applied for available position for which he or she was qualified and have been rejected, and must show that employer continued recruiting applicants with qualifications comparable to plaintiff's following rejection. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

5. Civil Rights ⇐44(4)

Evidence was sufficient to establish prima facie case of racial discrimination in television station's denial of promotion for black weekend news anchor to weekday or weeknight news anchor position; although consulting firm and focus group of viewers rated black anchor favorably and although black anchor had necessary qualifications and experience for promotion, he was passed over and preference was given to white candidates who were less qualified and less experienced, and memorandum and testimony of station general manager indicated that higher standard for promotion than that imposed upon white candidates was imposed upon black anchor. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

6. Civil Rights ¶44(4)

Evidence was sufficient to establish that television station's denial of promotion for black weekend news anchor to weekday or weeknight anchor position, due to alleged poor performance, was merely pretextual, and that decision was racially motivated; despite claims by station that black anchor was unqualified for promotion because he had problems with his speech and work habits, and propensity for making mistakes, station manager testified that black anchor was never really a candidate for promotion to weekday news anchor and that "black superstar" standard was imposed on black anchor, and station's employment records indicated that minorities at station did not serve in positions with decision-making responsibilities. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

7. Master and Servant ¶40(4)

Evidence was sufficient to establish prima facie case that television station's demotion of black weekend news anchor was in retaliation for anchor's filing discrimination lawsuit, and to rebut station's claim that demotion was due to legitimate concern regarding anchor's possible on-air comments about suit; although station claimed that anchor had sought out and encouraged publicity for suit, anchor was removed from all on-air duties four days after he filed lawsuit, and station management indicated that anchor would not have been removed from air but for filing of action and that it made no attempt to investigate its suspicions regarding anchor's alleged interest in self-promotion. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

8. Civil Rights ¶13.17(3, 7), 46(2)

Private plaintiff who sues under both Title VII and § 1981 for racial discrimination may obtain equitable relief under Title VII and compensatory and punitive damages under § 1981. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

9. Civil Rights ¶9.10

When person sues under § 1981 to enforce his right not to be discriminated against in private employment, he must show that he was unable to make or enforce a contract that white citizens were able to make or enforce; when employer places more stringent requirements on employee because of race, § 1981 is violated. 42 U.S.C.A. § 1981.

10. Civil Rights ¶13.13(3), 44(1)

Evidence was sufficient to establish that black television weekend news anchor was racially discriminated against by station in terms and conditions of his employment, by station's denying him written contract while white personnel performing as news anchors were given written contracts, in violation of both Title VII and § 1981. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

11. Civil Rights ¶44(3)

In order to establish prima facie case of discrimination in compensation, plaintiff must show that he is member of protected class, and that he is paid less than member of different race for work which requires substantially same responsibilities.

12. Civil Rights ¶44(3)

Evidence was sufficient to establish prima facie case of discrimination in compensation of black television weekend news anchor in comparison to white station personnel who performed substantially same work, and to rebut station's claims that black anchor's lower salary was due to lower qualifications; despite station's claim that pay difference between black weekend anchor and weekday anchors was industry-wide practice based on economic concerns, black anchor had been with station for 12 years and had performed substantially same work, and more, than similarly situated white personnel, and black anchor had maintained high viewer rating for programming upon which he appeared. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

13. Civil Rights ⇐33

For purposes of determining whether plaintiff may maintain civil rights action even though single discriminatory acts took place beyond applicable 180-day period for filing EEOC charge, test of "continuing violations doctrine" is whether plaintiff filed a charge of present violation which is part of ongoing pattern of discrimination.

See publication Words and Phrases for other judicial constructions and definitions.

14. Civil Rights ⇐33

Evidence established that television station's racial discrimination against black weekend news anchor was standard operating procedure and part of ongoing pattern of discrimination, and thus anchor's civil rights action under Title VII was not time barred by applicable 180-day period in which claim must be filed with Equal Employment Opportunity Commission; anchor did not allege any single discrete act of discrimination, but rather an ongoing pattern of salary discrimination and discrimination in promotion which took place over a period of years, and discrimination occurred and continued each time anchor received paycheck which was less than that of similarly situated white station personnel. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

15. Limitation of Actions ⇐127(3)

For purposes of determining whether civil rights action brought under § 1981 is time barred, test of "relation back doctrine" is whether there is factual nexus between amended complaint and original complaint, and whether defendant had notice of claim and would not be prejudiced by amendment. 42 U.S.C.A. § 1981.

See publication Words and Phrases for other judicial constructions and definitions.

16. Limitation of Actions ⇐127(3)

Black television weekend news anchor's amendment of original Title VII complaint, to add § 1981 action, related back to filing of original complaint and was thus not time barred; claims were substantially identical and arose out of same facts and circumstances, and original Title VII

action put television station on notice that it was being accused of racial discrimination. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

17. Civil Rights ⇐13.17(6, 7, 8, 9), 46(14, 15, 20, 21)

Upon determination that black television weekend news anchor had been denied promotion, denied written contract, and paid less, and had been demoted in retaliation for filing civil rights action, in violation of both Title VII and § 1981, anchor was entitled to recover back pay in comparison with salary of similarly situated white station personnel totaling \$74,120, compensatory damages for embarrassment, humiliation, and mental anguish totaling \$100,000, and punitive damages due to malicious and oppressive nature of station's discrimination totaling \$100,000; additionally, station would be required to pay attorney fees and expenses. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 42 U.S.C.A. § 1981.

Donald A. Donati, Deborah P. Ford, Memphis, Tenn., for plaintiff.

John Wilharm, Jr., David G. Holcombe, Cleveland, Ohio, Etrula R. Trotter, Memphis, Tenn., for defendant.

**MEMORANDUM AND ORDER
GRANTING JUDGMENT TO
PLAINTIFF**

HORTON, Chief Judge.

Dear Myron:

There's little I can add to what I've said to you before in personal chats or group meetings. However, let me restate the realities one more time on paper. Maybe I can make them clearer this way.

The Future

You are ambitious, which is good, and impatient, which is bad.

While it might soothe you temporarily if I hinted at the possibility of rapid advancement and big money not far

down the road, that would be a crummy thing to do.

I like you personally, for whatever that's worth, and admire your energy. But I'm hesitant to speculate on the future until you exhaust the opportunities in your present speciality—until everybody says, "That Myron Lowery is the best damned television reporter in Memphis!"

Mori Greiner, General Manager

WMC-TV September 26, 1974

It was never contemplated that Mr. Lowery would be a featured weekday anchor.

Mori Greiner, General Manager

WMC-TV, Testimony

I have some very strong impressions based upon a number of occurrences that, like patterns that repeated themselves. I believe that blacks were discriminated against.

And I would hear sometimes comments people would sometimes be in awe at the amount of work that Myron would do, how he seemed to get everything done, you know, he didn't sit around and have a cup of coffee or chew the fat, so to speak, for a couple of hours in Frank's office, you know, he came in, and between 'Minority Report' and anchoring the weekend news, which was sometimes referred to as the black news, mostly because of the stories and the anchors.

Sherry Rosen, Former Employee
News Department, WMC-TV

Myron Lewis Lowery, Jr., a well-known black television personality in Memphis, Tennessee, for more than ten years, filed this lawsuit on September 10, 1981, charging his employer, WMC-TV, racially discriminated against him in the following four ways:

(1) He was denied promotion from weekend to weekday news anchor because of his race, black, while white male employees with less experience and training were given such promotions. Mr. Lowery claims a different and far more stringent standard for promotion was applied to him by WMC-TV than applied to white

males who were promoted to news anchor positions. Mr. Lowery claims this application of different standards for promotion by WMC-TV and WMC-TV's failure to promote him was intentional, racially motivated conduct which is prohibited by the civil rights laws of the United States. Mr. Lowery also contends he was denied promotion to other positions at WMC-TV for racially biased reasons.

(2) WMC-TV racially discriminated against him in the terms and conditions of his employment in that similarly situated white male employees who were promoted to weekday and weeknight news anchor positions were given the benefit of a written contract of employment and higher pay while he, as weekend news anchor performing substantially the same work, was denied a written employment contract and was paid less money on a salary scale as reporter correspondent.

(3) Although he performed substantially the same work as white news anchor employees who worked under written employment contracts as weekday and weeknight news anchors, WMC-TV paid him less money for his services and Mr. Lowery claims this differential in pay was intentional and racially motivated conduct which was discriminatory toward him.

(4) When he exercised his legal right to file this racial discrimination lawsuit against WMC-TV, the management of that television station retaliated against him by taking him off the air. Mr. Lowery filed an amendment to his original complaint on September 23, 1981, asserting the retaliation charge after having obtained a right to sue letter from the Equal Employment Opportunity Commission.

WMC-TV strongly denied that it racially discriminated against Mr. Lowery in any way or manner whatever. WMC-TV claims Mr. Lowery's growth, development and performance peaked at a point in his career with the television station and he failed to measure up to standards the sta-

tion expected and demanded of its weekday and weeknight news anchors.

After hearing extensive evidence presented during a nine-day trial, reading

Considering the trial record as a whole and focusing the entire case down to its core, the preponderance of the evidence shows the management of WMC-TV

conducted at the Columbia University School of Journalism and funded by various foundations.

Upon completion of an eleven-week training program, Mr. Lowery returned to Memphis as WMC-TV's first full-time black reporter. After beginning as a general assignment reporter, Mr. Lowery was promoted in 1973 to co-anchor weekend newscasts, at first only Sunday newscasts. He continued as a weekend anchor with four thirty-minute newscasts until April of 1980, when he was reduced to two thirty-minute programs per weekend. Mr. Lowery also continued as a reporter, covering and editing his own stories, producing weekend newscasts, and developed and produced numerous documentaries. From time to time, he anchored weekday newscasts. In 1976, he became host of "Minority Report," the station's monthly public affairs program. As such, he served as the reporter, writer, producer, and often editor, of "Minority Report." He continued in this role, as well, until his resignation.

Mr. Lowery's work did not go unnoticed in the television industry. In 1974, he discovered the impending closing of the Mound Bayou Hospital in Mound Bayou, Mississippi. The small Mississippi town lacked federal funds to maintain its only hospital, serving predominantly black patients. In response to the community's crisis, Mr. Lowery with the station's support researched, wrote and produced a full-length documentary, "Trouble in Mound Bayou." He provided its on-air talent and assisted in editing the film. WMC-TV received for this documentary the prestigious Alfred I. DuPont-Columbia University Awards Citation for Distinction in Broadcast Journalism. Mori Greiner, WMC-TV Station Manager, distributed to the entire staff the following congratulatory comments: "Congratulations to Myron Lowery, who discovered 'Trouble in Mound Bayou', (sic) then wrote and produced a program about it." Mr. Lowery requested permission from station management to accept the citation at the awards ceremony and a duplicate citation. Mr. Greiner replied: "Mr. Lowery discovered the problem which the program addressed, convinced

management of its importance, and carried out the resulting assignment in a tenacious, enterprising and professional fashion. It would be entirely appropriate for him as well as the station to receive recognition."

Meanwhile, Mr. Lowery's stature as a leader in the community grew: The Tennessee Jaycees selected him for recognition and award as one of three outstanding young men in the state in 1981; the National Jaycees award followed in 1983 for recognition as one of Ten Outstanding Young Men in America.

In April 1980, Mr. Lowery was replaced on the Sunday news by Brenda Wood, a black female, hired from a Huntsville, Alabama station to co-anchor weekday evening news with Joe Birch. WMC-TV claims Ms. Wood was assigned the Sunday news anchor slot rather than the usual Friday evening spot in order to accommodate her religious beliefs. The same month, plaintiff filed his charge with EEOC, followed by this suit on September 10, 1981. Five days later he was removed from all on-air activity. He did not return until October 13, 1981. Due to vacation, regular time off and pre-approved absences from the station, plaintiff's actual time off the air was reduced to nine-and-a-half days, when his work consisted of "routine" assignments in the newsroom.

Mr. Lowery resigned August 4, 1983, to run for a seat on the Memphis City Council. At the time of his resignation, he remained a "reporter correspondent" and weekend anchor.

Promotion Claim

Myron Lowery claims that although he possessed the necessary qualifications and job experience he was denied, because of his race, the opportunity for promotion, by the management of WMC-TV, from weekend news anchor to weekday or weeknight news anchor. Mr. Lowery testified he was qualified for the job. He was already performing in the weekend news anchor position for the television station. He had high viewer recognizability as determined by a professional rating organization employed

by WMC-TV. Yet, he claims, when the weekday and weeknight news anchor positions were filled he was passed over and preference was given to white males who were much less qualified, less experienced and who had lower viewer recognizability ratings.

Mr. Lowery testified he was employed by WMC-TV in September, 1971. He was the first full-time black general assignment reporter employed by the station. His duties increased in 1973 when he became anchor person for the station's weekend news. In March, 1976, he was given the opportunity to produce a monthly public affairs program called "Minority Report." He said he produced this program until he left the station in August of 1983. He testified the "Minority Report" program was well-received and won several national awards, including honorable mention in the Ohio State Awards, and a third place category in the New York Film Festival. One program in the series, entitled "Trouble in Mound Bayou," received a citation for distinction in broadcast journalism from the Alfred I. DuPont Columbia University Awards Committee. That program dealt with the financial difficulties faced by a small predominately black hospital in Mound Bayou, Mississippi, serving indigent patients who were not receiving treatment at other white hospitals in the area. On January 20, 1975, Mori Greiner, General Manager of WMC-TV congratulated Lowery for discovering the trouble at the Mound Bayou hospital. Mr. Greiner also congratulated others who helped on the project and recognized that Lowery wrote the script and produced the program. In addition to being honored as one of the National Jaycee's Ten Outstanding Young Men in America in 1983, Mr. Lowery taught broadcast journalism at Memphis State University, Memphis, Tennessee, Howard University, Washington, D.C., and LeMoyne-Owen College, Memphis, Tennessee. He testified that several of his students went on to careers in broadcast journalism.

In order to demonstrate disparate treatment, based upon his race, which he claims he suffered at WMC-TV, Mr. Lowery testified that three white males with less job

qualifications than he had were given preference over him for promotion to weekday and weeknight news anchor positions. They were Roger Cooper, Mason Granger and Joe Birch.

Mr. Lowery testified that Roger Cooper joined the station several years after he had been employed there. He said Roger Cooper was promoted to five o'clock weeknight news anchor in December, 1977, and received a contract and a higher salary. Lowery said Cooper had a limited amount of television news experience as Cooper's experience was in radio. He said Cooper had no experience as a television news anchor and much less experience than he had in broadcast journalism. Mr. Lowery said Magid Consultants, employed by WMC-TV to conduct a community survey, reported Mr. Cooper placed very low on his recognizability factor and this survey was conducted before Cooper was promoted to weeknight news anchor. Mr. Cooper was apparently not successful in this position and was removed by station management. Mr. Greiner, General Manager of WMC-TV testified:

Q. Problems with Mr. Cooper persisted up through January of 1980?

A. Yes, sir.

Q. In January 1980 did you enter into a new contract with Mr. Cooper? Did you enter into a new contract with Mr. Cooper?

A. Yes, sir.

Q. Is it fair to say at that time, at the time of entry of this contract that you considered Mr. Cooper's performance to be below the level that you wanted it to be?

A. Yes, sir, in the case of Mr. Cooper it was a disappointment, we had the feel constantly that he was going to break loose and be splendid, it just didn't happen in the course of his employment with us. We still nurtured this hope at this time.

Q. You entered into a new contract with him January the 18th, 1980?

A. Yes, sir.

Q. And three months later you took him off the air as a weekend, not off the air, but you removed him from the weekend or the weekday anchor position?

A. The weekday anchor position, that is correct.

It is Mr. Lowery's position that he was better qualified than Mr. Cooper for the news anchor position. Yet, Mr. Cooper received preference over him and this, Mr. Lowery claims, was a racially biased and racially motivated management decision. Lowery testified that when Cooper was promoted he had been anchoring the weekend news show at WMC-TV since 1973 and had four years news anchor work with the television station.

Mr. Lowery testified a white male, Mason Granger, joined the station in 1975. When Mr. Granger first joined the station, he did not perform as a reporter. He was assigned to production aspects of the news such as operating a Teleprompter. He was promoted to reporter. In 1977, after he had been with the station two years, Mr. Granger was promoted to weeknight anchor. Mr. Lowery said when the news anchor positions were filled, there was no posting of any vacancy notice. He said it was just announced one day that Roger Cooper would co-anchor the five o'clock news and Mason Granger would be the anchor on the ten o'clock news. Mr. Lowery testified that at the time when Mr. Granger was promoted to news anchor the Magid Consultants survey showed that Granger had a very low recognizability factor while his, Lowery's, recognizability factor was extremely high. Comparing himself with Mr. Granger, Mr. Lowery said that at the time he had more broadcast journalism experience, a high recognizability factor and high ratings from both Neilson and Arbitron. He said his work was good yet he was denied the opportunity for promotion. This denial, Mr. Lowery claims, was racially motivated.

Subsequently, Mr. Lowery testified Mr. Granger was promoted to Assistant News

Director for WMC-TV. When Mr. Granger was promoted to News Director, Mr. Lowery testified he formally applied for the position of Assistant News Director, the position from which Mr. Granger had been promoted. He said he also discussed the possibility of his promotion with Mr. Granger. He said Mr. Granger responded to his inquiries by saying:

Well, Myron, that is a luxury I don't think we can afford to keep right now.

Mr. Lowery testified a third white male, Joe Birch, joined the station in 1982 as an intern. He said Mr. Birch started working on weekends as a "grip," carrying equipment. He was, however, given an opportunity to progress by being given additional assignments. He said Mr. Birch eventually started writing. He started working as a reporter and was allowed to substitute as anchor during weekdays and eventually was promoted to weekday anchor. At that point, Mr. Lowery testified he had nine years experience as a weekend news anchor, nine years experience as a reporter and six years experience as producer of "Minority Report." He said, at the time, Mr. Birch, to his knowledge, did not have any anchoring experience and no ratings to pull from. He testified that when Roger Cooper, Mason Granger and Joe Birch were promoted to anchor positions they did not have a track record with WMC-TV. He did have a work track record.

Mr. Lowery testified he was looking for avenues for professional growth and advancement. He said he sought other positions with the television station. He inquired about positions as Special Projects Director, Urban Affairs Director, Executive Director, Assistant News Director and a possible position in sales. He was not successful in obtaining any of those positions:

Q. Mr. Lowery, did you ever have any conversations during the course of your employment with Mr. Greaney about promotions?

A. I would say about two or three times a year I would talk to Mr. Greaney about promotions.

Q. What were the natures of the conversation, how did they, generally what did they involve?

A. His reply was the same that Mr. Greiner replied to me, and that was we're satisfied with what you are doing, you are doing a good job, let's, let's fully utilize you in this area, and let's see what might come along.

Q. At any time during these discussions did Mr. Greaney or Mr. Greiner complain about your competency as a weekend anchor?

A. They never did. In fact, I was complimented. You look at an anchor, you also judge an anchor by rating. At one point I had a rating of higher than a 50 percent share, and that is something that was unheard of, there wasn't any network bringing in 50 percent share of local newscasts, and they were quite satisfied with that.

Q. When you asked about advancement, promotions, did Mr. Greaney and Mr. Greiner, what was their response typically?

A. Their response was they were pleased with what I was doing and the role that I was doing, and I had to continue to do that.

If you recall earlier in the trial, Mr. Greiner wrote me a memo and he said until everyone says that Myron Lowery is the best damned reporter in town, until you have exhausted everything in your present speciality, then we will talk about your promotion. I was constantly put over by saying you are doing fine, let's wait a while, we are pleased with the role that you are doing.

Q. Did you ever specifically ask for promotions into other areas?

A. Yes, I did.

Q. To Mr. Greaney and to Mr. Greiner?

A. Yes, I did.

Q. What areas specifically?

A. I asked for promotions within and outside the news department. Specifically outside the news department, I discussed the opportunity in sales.

Q. When did you first discuss that?

A. It was during the seventies.

Q. All right. Any other specific discussions about jobs to be promoted to, you said inside and outside the newsroom?

A. Outside, we mentioned sales during the seventies. At that time the station did not have any black sales people at all, they eventually hired one, one black male. They eventually hired another black female. During the time that I was asking for that promotion, there weren't any blacks in the sale department.

Q. What was the response concerning sales?

A. They were pleased with what I was achieving and doing within the news department as a reporter. They were pleased with the weekend anchoring. They were pleased with "Minority Report".

Q. Any other jobs that you specifically requested transfer or promotion to?

A. I asked Mori Greiner on several occasions as well as Ed Greaney what I needed to do for professional growth and advancement, what was it necessary for me to do, and I was told to continue to do what you are doing. I asked specifically about special projects. The position that Frank Gardner had in terms of producing documentaries. I had experience in this area, I had produced a documentary on Martin Luther King, I produced a documentary on the Mound Bayou, two documentaries in Guatemala, I had a good track record, those were good productions.

Q. What was Mr. Greiner's response when you requested that?

A. He agreed they were good. Eventually I was given the opportunity to do "Minority Report" based on the track record for producing those other documentaries, and my duties were expanded to produce "Minority Report", that was one response as opposed to being given the job of special projects, which would have been on a full time basis at a higher salary.

Q. Any other jobs that you specifically talked to or advancement with Mr. Greiner or Mr. Greaney?

A. Again the general overall conversation dealt with advancement within the news department, and whatever it took for that. They were filling the position of executive producer. I asked for any position within the news department, and that was one of the positions that was open during several periods of time. Also the position of assistant news director. Now, you specified Mr. Greiner and Mr. Greaney. I talked specifically with Mason Granger about that particular position.

Q. There's been discussion about, throughout the course of this trial about subjective criteria for a weekday anchor, a discussion about diction and pronunciation and those matters. Are you aware of any nationally recognized news personalities or talent that have distinctive pronunciation or problems in those areas?

A. People in the business refer to problems that Barbara Walters has at times, as well as Tom Brokaw, they call Barbara Walters, Barbara Wau-Wau because of what she does with her R's, and so far that happens to people, they are still accepted and they progressed.

Q. Mr. Lowery, do you believe you have any problem with your diction, speech, enunciation or pronunciation?

A. Not any type of problems that would have prevented me from the weekday anchor. I was good enough for ten years as the weekend anchor and never given the opportunity to be the weekday anchor, and from what they have said in this court about they were giving me the opportunity to grow, how much time do you need. I should have been given that opportunity. I felt I was bringing in high ratings on the weekend, I had high recognizability, I was doing the job for them in one area, I was good enough for one part but not for the other area.

During his tenure with the television station, Mr. Lowery testified he did not know of any black reporter who received a promotion. He said there were black employees who sought promotion and either left the station or were terminated:

(1) *Phyllis Armstrong*, a black female reporter, sought advancement and later

left the station. At the time of trial, he said she was employed as a morning news anchor in Washington, D.C.

(2) *George Bryant*, a black male, sought promotion and subsequently left the station for a reporter/weekend anchor position in Atlanta, Georgia.

(3) *Sylvia Black*, a black female, sought promotion. She was terminated and later found employment in Pittsburgh, Pennsylvania, and Houston, Texas.

(4) *Hank Lockhart*, a black male reporter, sought promotion but was eventually terminated.

(5) *Carolyn Brooker*, a black female, sought promotion and subsequently left the station for employment in Minneapolis, Minnesota.

(6) *Cynthia Williams*, a black female reporter, sought promotion and was subsequently terminated.

Lowery claims, however, that white reporters were promoted during the years of his tenure at WMC-TV. He mentions again Roger Cooper, Mason Granger and Joe Birch. He said Gaylon Reasons, a white male, was promoted from Film Editor to Executive Producer. Ron Michaels, white male radio reporter, was promoted to Assignments Editor within the News Department.

Sherry Rosen, a white female, testified she started at WMC-TV as an unpaid intern and was subsequently hired by the station as a Researcher in the News Department. She was employed there from late summer of 1977 to the summer of 1978. She testified that black reporters were treated differently from white reporters. She said she had very strong impressions based upon a number of occurrences like patterns that repeated themselves.

Ms. Rosen testified she believed blacks were discriminated against. She overheard conversations in the newsroom between Mr. Gardner, Mr. Reasons, Mr. Michaels and Mr. Zarchin. She testified a lot of comments were made about Sylvia Black, a black female reporter. These men did not feel her appearance or the sound of her voice was what they wanted on the TV